

**REGULATION (EU) No 1311/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 December 2011**

amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 177 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The unprecedented global financial crisis and economic downturn have seriously damaged economic growth and financial stability and provoked a strong deterioration in financial, economic and social conditions in several Member States. In particular, certain Member States are experiencing serious difficulties or are threatened with such difficulties, notably with problems concerning their economic growth and financial stability and with a deterioration in their deficit and debt position, also due to the international economic and financial environment.
- (2) Whilst important actions to counterbalance the negative effects of the crisis have already been taken, including amendments to the legislative framework, the impact of the financial crisis on the real economy, the labour market and citizens is being widely felt. Pressure on national financial resources is increasing and further steps should be taken rapidly to alleviate that pressure through the maximal and optimal use of funding from the Structural Funds and the Cohesion Fund.
- (3) Pursuant to Article 122(2) of the Treaty on the Functioning of the European Union which provides for the possibility of granting Union financial assistance to a Member State in difficulties or seriously threatened with

severe difficulties caused by exceptional occurrences beyond its control, Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism ⁽³⁾ established such a mechanism with a view to preserving the financial stability of the Union.

- (4) By Council Implementing Decisions 2011/77/EU ⁽⁴⁾ and 2011/344/EU ⁽⁵⁾ Ireland and Portugal, respectively, were granted such financial assistance.
- (5) Greece was already experiencing serious difficulties with respect to its financial stability before the entry into force of Regulation (EU) No 407/2010. Financial assistance to Greece could not, therefore, be based on that Regulation.
- (6) The Intercreditor Agreement and the Loan Facility Agreement for Greece, concluded on 8 May 2010, entered into force on 11 May 2010. Provision is made for the Intercreditor Agreement to remain in full force and effect for a three-year programme period as long as there are any amounts outstanding under the Loan Facility Agreement.
- (7) Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments ⁽⁶⁾ provides that the Council is to grant medium-term financial assistance where a Member State, which has not adopted the euro, is in difficulties or is seriously threatened with difficulties as regards its balance of payments.
- (8) By Council Decisions 2009/102/EC ⁽⁷⁾, 2009/290/EC ⁽⁸⁾ and 2009/459/EC ⁽⁹⁾, Hungary, Latvia and Romania, respectively, were granted such financial assistance.
- (9) The period during which financial assistance is available to Ireland, Hungary, Latvia, Portugal and Romania is set out in the relevant Council Decisions. The period during which financial assistance was made available to Hungary expired on 4 November 2010.

⁽¹⁾ Opinion of 27 October 2011 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 1 December 2011 (not yet published in the Official Journal) and decision of the Council of 12 December 2011.

⁽³⁾ OJ L 118, 12.5.2010, p. 1.

⁽⁴⁾ OJ L 30, 4.2.2011, p. 34.

⁽⁵⁾ OJ L 159, 17.6.2011, p. 88.

⁽⁶⁾ OJ L 53, 23.2.2002, p. 1.

⁽⁷⁾ OJ L 37, 6.2.2009, p. 5.

⁽⁸⁾ OJ L 79, 25.3.2009, p. 39.

⁽⁹⁾ OJ L 150, 13.6.2009, p. 8.

- (10) The period during which financial assistance under the Intercreditor Agreement and the Loan Facility Agreement is available to Greece is different as far as each Member State participating in those instruments is concerned.
- (11) On 11 July 2011, the finance ministers of the 17 euro area Member States signed the Treaty establishing the European Stability Mechanism (ESM). Under that Treaty, which follows the European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro ⁽¹⁾, the ESM will assume the tasks currently fulfilled by the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM), by 2013. The ESM should therefore already be taken into account by this Regulation.
- (12) In its conclusions of 23 and 24 June 2011 the European Council welcomed the Commission's intention to enhance the synergies between the loan programme for Greece and Union funds, and supported efforts to increase Greece's capacity to absorb Union funds in order to stimulate growth and employment by refocusing on improving competitiveness and employment creation. Moreover, it welcomed and supported the preparation by the Commission, together with the Member States, of a comprehensive programme of technical assistance to Greece. This amendment to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund ⁽²⁾ contributes to such synergy efforts.
- (13) In order to facilitate the management of Union funding, to help accelerate investments in Member States and regions and to improve the availability of funding to implement the cohesion policy it is necessary to allow, in justified cases, temporarily and without prejudice to the 2014 to 2020 programming period, an increase of interim payments and payments of the final balance from the Structural Funds as well as from the Cohesion Fund, by an amount corresponding to ten percentage points above the co-financing rate applicable for each priority axis, for Member States which are facing serious difficulties with respect to their financial stability, and have requested to benefit from this measure. As a result, the required national counterpart will be reduced accordingly. Due to the temporary nature of that increase and in order to maintain the original co-financing rates as the reference point for calculation of the temporarily increased amounts, the changes resulting from application of the mechanism should not be reflected in the financial plan included in the operational programme. However, operational programmes may need to be updated in order to concentrate the Funds on competitiveness, growth and employment and in order to align their targets and objectives with the decrease of total funding available.
- (14) The Member State making a request to the Commission to benefit from the derogation under Article 77(2) of Regulation (EC) No 1083/2006 should clearly specify in its request the date from which it considers the derogation to be justified. In its request, the Member State concerned should submit all the information necessary to establish, by means of data on its macroeconomic and fiscal situation, that resources for the national counterpart are unavailable. It should also show that an increase of payments from the derogation is necessary to safeguard the continued implementation of operational programmes and that the absorption capacity problems persist even if the maximum ceilings applicable to co-financing rates set out in Annex III to Regulation (EC) No 1083/2006 are used. The Member State concerned should also provide the reference to the relevant Council Decision or other legal act making it eligible to benefit from the derogation. The Commission should verify whether the submitted information is correct and should have 30 days from the submission to raise an objection. In order to make the derogation effective and operational, there should be a presumption that a Member State's request is justified if the Commission does not raise an objection. However, the Commission should be empowered to adopt, by way of an implementing act, a decision on any objection to the Member State's request, in which case, the Commission should give its reasons.
- (15) The rules on calculation of interim payments and payments of the final balance for operational programmes during the period in which the Member States receive financial assistance for addressing serious difficulties with respect to their financial stability should be revised accordingly.
- (16) It is necessary to ensure that there is appropriate reporting on the use of the increased amounts made available to the Member States benefiting from a temporary increase of interim payments and of payments of the final balance in accordance with the derogation under Article 77(2) of Regulation (EC) No 1083/2006.
- (17) After the end of the period during which financial assistance has been made available, evaluations carried out in accordance with Article 48(3) of Regulation (EC) No 1083/2006 might need to, inter alia, assess whether the reduction of the national co-funding leads to a significant departure from the goals that were initially established. Such evaluations might lead to the revision of the operational programme.
- (18) As the unprecedented crisis affecting international financial markets, and the economic downturn, which have seriously damaged the financial stability of several Member States, necessitate a rapid response in order to counter the effects on the economy as a whole, this Regulation should enter into force as soon as possible. Given the exceptional circumstances of the Member

⁽¹⁾ OJ L 91, 6.4.2011, p. 1.

⁽²⁾ OJ L 210, 31.7.2006, p. 25.

States concerned, it should apply retroactively starting either from the budgetary year of 2010 or from the date, on which the financial assistance was made available, depending on the requesting Member State's status, for the periods during which the Member States received financial assistance from the Union or from other euro area Member States in order to address serious difficulties with respect to their financial stability.

- (19) Where a temporary increase of interim payments or of payments of the final balance is envisaged in accordance with the derogation under Article 77(2) of Regulation (EC) No 1083/2006, it should also be considered in the context of the budgetary restraints facing all Member States, which should be reflected appropriately in the general budget of the European Union. In addition, since the main purpose of the mechanism is to address specific current difficulties, its application should be limited in time. Therefore application of the mechanism should start on 1 January 2010 and its duration should be limited until the end of 31 December 2013.
- (20) Regulation (EC) No 1083/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Article 77 of Regulation (EC) No 1083/2006 shall be replaced by the following:

'Article 77

Common rules for calculating interim payments and payments of the final balance

1. Interim payments and payments of the final balance shall be calculated by applying the co-financing rate laid down in the decision on the operational programme concerned for each priority axis to the eligible expenditure indicated under that priority axis in each statement of expenditure certified by the certifying authority.

2. By way of derogation from Article 53(2), from the second sentence of Article 53(4) and from the ceilings set out in Annex III, interim payments and payments of the final balance shall be increased by an amount corresponding to 10 percentage points above the co-financing rate applicable to each priority axis, but not exceeding 100 %, to be applied to the amount of eligible expenditure newly declared in each certified statement of expenditure submitted during the period in which a Member State meets one of the following conditions:

- (a) financial assistance is made available to it in accordance with Council Regulation (EU) No 407/2010 of 11 May

2010 establishing a European financial stabilisation mechanism (*) or financial assistance is made available to it by other euro area Member States before the entry into force of that Regulation;

- (b) medium-term financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (**);
- (c) financial assistance is made available to it in accordance with the Treaty establishing the European Stability Mechanism following its entry into force.

3. A Member State seeking to benefit from a derogation under paragraph 2, shall submit a written request to the Commission by 21 February 2012 or within 2 months from the date on which the Member State meets one of the conditions referred to in paragraph 2.

4. In its request under paragraph 3, the Member State shall justify the need for the derogation, by providing information necessary to establish:

- (a) by means of data on its macroeconomic and fiscal situation, that no resources for the national counterpart are available;
- (b) that an increase of payments, as referred to in paragraph 2, is necessary to safeguard the continued implementation of operational programmes;
- (c) that problems persist even if the maximum ceilings applicable to co-financing rates set out in Annex III are used;
- (d) that it meets one of the conditions referred to in points (a), (b) or (c) of paragraph 2, by providing a reference to a Council Decision or other legal act, as well as the concrete date from which the financial assistance was made available to the Member State.

The Commission shall verify whether the information submitted justifies granting a derogation under paragraph 2. The Commission shall have 30 days from the date of submission of the request to raise an objection as to the correctness of the submitted information.

If the Commission decides to object to the Member State's request, the Commission shall adopt a decision, by means of an implementing act, stating its reasons.

If the Commission does not raise an objection to the Member State's request under paragraph 3, the request shall be considered to be justified.

5. The Member State's request shall also detail the intended use of the derogation provided for in paragraph 2, and give information about complementary measures foreseen in order to concentrate the Funds on competitiveness, growth and employment, including, where appropriate, a modification of operational programmes.

6. The derogation provided for in paragraph 2 shall not apply for statements of expenditure submitted after 31 December 2013.

7. For the purpose of calculating interim payments and payments of the final balance after a Member State ceases to benefit from the financial assistance referred to in paragraph 2, the Commission shall not take into account the increased amounts paid in accordance with that paragraph.

However, those amounts shall be taken into account for the purpose of Article 79(1).

8. The increased interim payments resulting from the application of paragraph 2 shall be made available as soon as possible to the managing authority and shall only be used for making payments in the implementation of the operational programme.

9. In the context of strategic reporting under Article 29(1), Member States shall provide the Commission with appropriate information on the use of the derogation, provided for in paragraph 2 of this Article, showing how the increased amount of support has contributed to

promote competitiveness, growth and employment in the Member State concerned. That information shall be taken into account by the Commission in the preparation of the strategic report referred to in Article 30(1).

10. Notwithstanding paragraph 2, the Union contribution through interim payments and payments of the final balance shall not be higher than the public contribution and the maximum amount of assistance from the Funds for each priority axis as laid down in the decision of the Commission approving the operational programme.

11. Paragraphs 2 to 9 shall not apply to operational programmes under the European territorial cooperation objective.

(*) OJ L 118, 12.5.2010, p. 1.

(**) OJ L 53, 23.2.2002, p. 1.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

However, it shall apply retroactively to the following Member States: in the case of Ireland, Greece and Portugal, with effect from the date on which the financial assistance was made available to those Member States as mentioned in Article 77(2) of Regulation (EC) No 1083/2006, and in the case of Hungary, Latvia and Romania, with effect from 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 13 December 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
M. SZPUNAR